Supreme Court, U.S.
FILED
MAY 26 1993
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92-1872

No. _____

IN THE

SUPREME COURT OF THE

UNITED STATES

October 1992 Term

RALPH E. FACEMIRE

Petitioner,

v.

DAVID L. DUFF; DAVID L. DUFF, P.C.;
ERIC F. SCHELL

Respondents

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Ralph E. Facemire, Pro Se
449 E. University Boulevard
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QUESTIONS PRESENTED

WAS PETITIONER DENIED DUE PROCESS OF LAW?

WAS PETITIONER DENIED EQUAL PROTECTION OF LAW?

WAS PETITIONER DENIED TRIAL BY JURY OF HIS PEERS AS REQUIRED BY THE SEVENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

DOES COLLATERAL ESTOPPEL APPLY, WHEN THE FRAUD COMPLAINED OF OCCURRED DURING THE TRIAL, WHICH IS USED AS THE BASE TO APPLY COLLATERAL ESTOPPEL, AND PETITIONER HAD NO KNOWLEDGE THE FRAUD WOULD OCCUR TILL DURING THE ACTUAL TRIAL AND FURTHER THAT WAS A COURT OF EQUITY?

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PRIOR OPINIONS IN THIS CASE

The United States Court of Appeals for the Fourth Circuit decided this case on May 17, 1993 which was to deny a Petition for Rehearing from the "OPINION" decided: April 23, 1993, which were not published, however they are reproduced in the Appendix to this Petition for a Writ of Certiorari. Those decisions were to Affirm the decision of the United States District Court for the Eastern District of Virginia, at Alexandria, which granted summary judgment to Defendants based upon Collateral Estoppel, again the transcript of that ruling is supplied in the Appendix to this Petition.

GROUNDS ON WHICH THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES IS INVOKED

The decision of the United States Court of Appeals for the Fourth Circuit will be entered on May 24, 1993. The statute which confers jurisdiction on this Court is 28 U.S.C. 1254

THE AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES WHICH ARE INVOLVED IN THIS CASE

ARTICLE V UNITED STATES CONSTITUTION

> No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the laud or naval forces, or in the Militia when in actual service, in time of war of public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VII UNITED STATES CONSTITUTION

> In suits at common law, where the value of the controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE XIV UNITED STATES CONSTITUTION

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within this jurisdiction the equal protection of the law.

CONCISE STATEMENT OF THE CASE

David L. Duff, P.C.; David L. Duff; and Eric F. Schell did individually and collectively, willfully and maliciously use

fraudulently fabricated documents to get rulings favorable to their clients in case 90-33 (a chancery case) in the Circuit Court of Fauquier County, Virginia and in case 91-1624A in the United States District Court for the Eastern District of Virginia in Alexandria.

These Defendants David L. Duff, P.C.; David L. Duff; and Eric F. Schell did individually and collectively, willfully and maliciously used a statement out of context from a deposition to deceive the Court in case 90-33.

In the United States District Court for the Eastern District of Virginia, Civil Action No. 91-1624 in the Discovery Process petitioner asked for all minutes of shareholders and directors meetings with By-Laws of Ben J. Powers Construction, Inc. Petitioner was required to file a Motion to Compel Discovery to get those documents, and David L. Duff himself argued against that motion in court but the Judge ordered those documents be produced. David L. Duff produced those same falsely fabricated documents which were used in case 90-33 but signed for Eric F. Schell who was attorney of record which is a violation of rule II of the

F.R.C.P. Again this petitioner filed a motion to Compel Discovery which again David L. Duff argued against, the Judge ordered they be signed by Eric F. Schell which he did. This is proof both Eric F. Schell and David L. Duff knowingly took part in the use of those fraudulent documents in the judicial system of this great nation. There can be no question that any officer of the court who would do such a thing should be disbarred and jailed. There can be no question Virginia Court of Appeals Judge Charles Duff (father of David L. Duff) has thus far used his great political clout to keep his son from facing criminal charges. The United States Court of Appeals for the Fourth Circuit, the Virginia Supreme Court, and the Virginia Court of Appeals are within two city blocks of each other and there can be no doubt Judge Charles Duff has a very close relationship with every Judge on each of those Courts. There can be no question the reasonable prudent man would conclude the appearance of this petitioner finding a fair Judge in any of those Courts is very remote, thus the reasonable prudent man would conclude any Judge in any of those Courts would help Judge Charles

Duff in his effort to avoid his son David L. Duff being disbarred and jailed.

In case No. 92-1656 now before this MOST HIGH COURT petitioner stated "Attorney Eric F. Schell, David Duff and the Powers fabricated false and fraudulent minutes of shareholders and directors meetings and By-Laws of Corp. to show Facemire was not a director of Corp". Eric F. Schell filed a "Brief in Opposition" in that case and in spite of this Courts Rule 15.1 did not deny that statement nor statements that he and David Duff should be disbarred and jailed, petitioner submits to this Court that thereby Eric F. Schell admitted he has done the acts complained of in this case. In that same case this petitioner made the statement "There can be no question Judge Charles Duff has and will continue to do anything legal or illegal to keep his son David Duff form being disbarred and jailed". Again Eric F. Schell did not deny this statement therefore admitted the same. Ben J. Powers, a signatory of those fraudulent documents, under oath in case 90-33 would not swear Eric F. Schell did not prepare those fraudulent documents.

Ben J. Powers and Hazel Powers signatories of all those fraudulent documents filed a chapter 7 bankruptcy petition August 17, 1992 in which they swore they together owed this petitioner $250,000 which was Fixed and Liquidated in regard to case 90-30. There can be no question they thereby admitted they defrauded this petitioner in that case.

All parties have admitted these fraudulent documents were used to defraud petitioner, however they are trying to hide behind the fact Judge Charles Duff has used great political clout to convince Judge Gamble to put on blinders so he could not see the fraud committed by the son of one of his fellow Judges.

It is now a proven fact fraudulent documents were also used to get into the chancery side of the Virginia Court to avoid letting a jury hear about all the FRAUD used against this petitioner. There can be no question the "Good Old Boy Network of Virginia" has used its great political clout to avoid criminal charges being filed against some of its members and to avoid letting this petitioner have a jury of his peers decide his cases.

ARGUMENT

This God fearing, fat non-lawyer foolish American prays for the indulgence of this Most High Court. In the case "Kamen v. Kemper Financial Service, Inc." argued March 27, 1991 and decided May 20, 1991, by a unanimous decision of this Most High Court, this Court stated "When an issue or claim is properly before the Court, this Court is not limited to the particular legal theories by the parties but rather retains the independent power to identify and apply the proper construction of governing law." In that case the foregone statement played the key to that decision. Since that is the absolute best case law anyone could possibly advance, petitioner prays that be applied in this case.

DUE PROCESS: In Marshall v. Jerrico, Inc. (1980) 446 US 238, 64 L Ed 2d 182,100 S CT 1610 this Court stated in part "_ _ stringent rule that justice must satisfy appearance of justice must be applied, although it may sometime bar trial by judges who have no actual bias." There is no way a reasonable prudent man would conclude after reviewing this case the appearance of justice is intact. The reasonable

prudent man would conclude petitioner has thus far been denied Due Process.

Even Judge Gamble in case 90-33 ruled that Fraud was not a proper tort to be tried on the chancery side of that Court. Even he moved Liberty Savings Banks claim of Fraud to the Law side of the Court. The whole collateral estoppel theory is based upon Judge Gamble's denial of petitioner's "Petition for Rehearing" again all on the chancery side of the Court.

As cited by the Fourth Circuit in this case: Collateral estoppel may be used defensively as a bar if the plaintiff had a full and fair opportunity to litigate the issues in the previous suit; mutuality of the parties is not required. Blonder-Tongue Labs., Inc. v. U iversity of Illinois Found 402 U.S. 313 (1971). Petitioner had no opportunity to conduct discovery, to depose witnesses, to file motions and right to ask for change of venue as it related to the Fraud claim. Again petitioner had no idea of this Fraud until after the trial had already begun. Again the reasonable prudent man would conclude petitioner did not have a full opportunity to litigate the issues of Fraud

complained of in this case. Fair: that case is now before this Court, one question being Due Process, again petitioner would declare the reasonable prudent man would conclude petitioner was denied Due Process in that whole case.

EQUAL PROTECTION: The very day petitioner approached the Virginia Commonwealth attorney in his office in the Fauquier County, Virginia courthouse, he showed that attorney, 3 criminal cases of uttering were on the docket for that very day, one was for a check of about $100 while the parties in this case were uttering documents to take over $500,000 worth of this petitioner's property. The reasonable prudent man would conclude equal protection demanded this claim warranted criminal prosecution just like they prosecuted the person uttering a check for about $100. Petitioner has asked the FBI, Governor Wilder, the Fauquier County Sheriff, the Virginia State Police, the Honorable Janet Reno, and even asked this Court issue a Writ of Mandamus requiring the U.S. Attorney investigate this Fraud.

The great political clout of the "Good Old Boy Network of Virginia" has been used to steal this petitioner's business and property.

This petitioner submits he has been denied the equal protection of law, which is his Civil Right per Article XIV of the United States Constitution.

RIGHT TO TRIAL BY JURY: Fraud was used to get the state court action on the chancery side of the Court thus deny petitioner his right to trial by jury, petitioner submits to this Court that Fraud cannot be used to deny petitioner his right to trial by jury for the Fraud used against him in that chancery court.

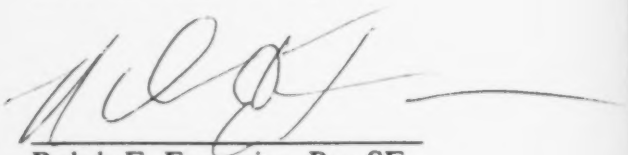
DOES COLLATERAL ESTOPPEL APPLY: This Most High Court stated in Blonder-Tongue Labs., Inc. v. University of Illinois Found 402 U.S. 313 (1971) Collateral estoppel may be used defensively as a bar if the plaintiff had a full and fair opportunity to litigate the issues in the previous suit, mutuality of the parties is not required. Please also see petitioner's argument under Due Process on this issue. Petitioner again submits the reasonable prudent man would

conclude petitioner did not have a full and fair opportunity to litigate the Fraud issue these respondents used during that trial. Again even that case is now before this Most High Court one question being Due Process. The reasonable prudent man would conclude you would have a very hard time to find a Judge, who is a lawyer, to be unbiased when a Judge's son is before him accused of a fraud which should cause that Judge's son to be disbarred and jailed.

CONCLUSION

WHEREFORE, Petitioner prays that a Writ of Certiorari directed to the United States Court of Appeals for the Fourth Circuit be granted.

Love in Christ



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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
May 17, 1993

No. 92-2392
CA-92-1330

RALPH E. FACEMIRE

Plaintiff - Appellant

v.

DAVID L. DUFF; DAVID L. DUFF, P.C.; ERIC F. SCHELL

Defendants - Appellees

ORDER

The appellant has filed a petition for rehearing. The Court denies the petition for rehearing.

For the Court,

/s/ Bert M. Montague

CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RALPH E. FACEMIRE **Plaintiff - Appellant,** vs. DAVID L. DUFF; DAVID L. DUFF, P.C.; ERIC F. SCHELL **Defendants - Appellees**	No. 90-2392

PETITION FOR REHEARING

COMES NOW, Ralph E. Facemire, Pro Se, plaintiff-appellant, and prays for a rehearing of this case for the following reasons; which are material facts overlooked in the decision:

(1) The state court case this Court based its collateral estoppel theory on, is now before the Supreme Court of the United States, docketed March 31, 1993 as No. 92-1656.

(2) The questions presented to the Supreme Court of the United States are (a) Due Process (b) Equal protection and (c) Right to Trial by jury.

(3) As stated in this Court's "OPINION" in this case dated April 23, 1993, for Collateral Estoppel to apply the litigant must have had a <u>full and fair</u> opportunity to litigate the issues

in the previous suit. That is now one of the questions before the Supreme Court of the United States this date, docket No. 92-1656, please see attached copy of the letter from the Clerk of the Supreme Court of the United States dated April 20, 1993.

WHEREFORE, Ralph E. Facemire, Pro Se prays for a REHEARING of this case or to wait for the ruling of the Supreme Court of the United States docket No. 92-1656, to avoid the filing of a "Petition for Writ of Certiorari" in this case.

Love in Christ

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CERTIFICATE OF SERVICE

I, Ralph E. Facemire, Pro Se certify that I mailed postage prepaid a copy of the Petition for Rehearing to opposing counsel Eric F. Schell at 11320 Random Hills Road, Suite 520, Fairfax, Virginia 22030, this day April 27, 1993.

Ralph E. Facemire, Pro Se

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

RALPH E. FACEMIRE,
Plaintiff-Appellant,

vs.

DAVID L. DUFF; DAVID L. DUFF, P.C.;
ERIC F. SCHELL,
Defendants-Appellees.

No. 92-2392

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Claude M. Hilton, District Judge.
(CA-92-1330)

Submitted: April 6, 1993
Decided: April 23, 1993

Before HAMILTON, LUTTIG, AND WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Ralph E. Facemire, Appellant Pro Se. Eric Franklin Schell, Fairfax, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

Ralph E. Facemire appeals the district court's order granting summary judgment to Defendants. We affirm.

Facemire filed this action alleging fraud by the attorneys who represented his adversaries in several former actions in state and federal court. Although the present Defendants were not parties to the prior actions, the district court found that Facemire was collaterally estopped from raising those allegations, based on a prior state court adjudication on the issue adverse to Facemire.

Defensive collateral estoppel bars a claim where a defendant seeks to prevent a plaintiff from asserting a claim that the plaintiff has previously litigated and lost against another defendant. Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n.4 (1979). Collateral estoppel may be used defensively as a bar if the plaintiff had a full and fair opportunity to litigate the issues in the previous suit; mutuality of the parties is not required. Blonder-Tongue Labs., Inc. v. University of Illinois Found., 402 U.S. 313 (1971); Thurston v. United States, 810 F.2d 438 (4th Cir. 1987).

In this case, Facemire has merely repeated the same allegations he raised in his previous state court case. The only difference is that now he has included his adversaries law firm as a Defendant. Facemire had a full and fair opportunity to litigate the fraud issue in state court. The state court considered his fraud claim and ruled against him. The fraud issue in both cases was identical, was actually litigated, was determined by a final and valid order, and was necessary to the state court judgment. Therefore, Defendants have shown that the requirements for applying defensive collateral

estoppel were satisfied. Accordingly, we affirm the judgment of the district court.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

RALPH E. FACEMIRE,
Plaintiff,

vs.

DAVID L. DUFF, P.C., et. al.,
Defendants.

C.A. No. 92-1330-A

HEARING ON MOTIONS

October 30, 1992

Before: Claude M. Hilton, Judge

APPEARANCES:

Ralph E. Facemire, Pro Se

Eric F. Schell, Counsel for the Defendants

THE CLERK: Civil action 92-1330-A, Ralph E. Facemire versus David L. Duff, et al. Are the parties ready, please?

MR. SCHELL: Good morning, Your Honor. Eric Schell representing David L. Duff, P.C., and David L. Duff individually, and myself pro se.

MR. FACEMIRE: Your Honor, first of all, I would like to take up a little matter here.

THE COURT: All right.

MR. FACEMIRE: Your honor, two of the defendants in this case are attorneys, your colleagues. The father of one defendant just retired from the Virginia Court of Appeals, Judge Charles Duff.

No one can dispute the fact that if these defendants did what I swear they did, this defendant should be in the custody of the U.S. Marshal today.

Your honor, since your colleagues are involved in this case, I respectfully request permission to do a voir dire of His Honor.

THE COURT: Well, I am not inclined to grant that, Mr. Facemire. But if you figure that all the colleagues are, just

because we are either judges or lawyers, are all going to be prejudiced, who are you going to get to hear your suit?

MR. FACEMIRE: Your Honor, I take it my motion is denied. I would take an exception. Thank you.

THE COURT: Well, you are more than welcome to an exception, but if all judges are disqualified, I don't know who is going to hear you.

MR. SCHELL: May I present my motion, Your Honor?

THE COURT: All right. Your Honor, again I am Eric Schell. This comes on my motion to dismiss for failure to state a claim which can be granted. Mr. Facemire, as the Court may be aware from other litigation that he has filled in this court, was involved in a transaction in Fauqier County--

THE COURT: Don't give me the facts. Just tell me why he hasn't stated a claim.

MR. SCHELL: Your Honor, this matter is barred by collateral estoppel. Mr. Facemire has raised the issue of fraud perpetrated by documentary evidence in that court both at the trial of the matter on October 23, 1991, which was denied; and he subsequently filed a bill of review with Judge

Gamble in that court asking again that these allegations of fraud be revisited and that the decree be set aside. And in Judge Gamble's letter opinion which was incorporated into a decree, Judge Gamble stated as a matter of law that no fraud had been perpetrated upon his court. And that although Mr. Facemire had raised those matters, he had no further matters to raise, and as such it was denied.

Collateral estoppel can be used defensively even though there is no identity of the parties wherein the action was actually litigated, which it was in Fauquier County, and was decided against him and made part of a final decree.

For that reason, Your Honor, he has had his bite at the apple. We ask that it be dismissed.

THE COURT: All right.

MR SCHELL: Thank you.

MR. FACEMIRE: Your Honor, has His Honor read my memorandum in support of objection to defendant's motion to dismiss?

THE COURT: I have.

MR. FACEMIRE: Okay, Your Honor. First of all, just briefly, the case that he is talking about is currently on appeal to the Supreme Court of Virginia. One of the-- In fact, the first ground for appeal was due process.

Judge Sinclair, who was the attorney who for many years represented three of the parties, was designated to hear that case. And I am sure--

THE COURT: Mr. Facemire, let me interrupt you a minute and ask, if that case is on appeal and those issues are going to be determined, why in the world are you in here filing another suit over it causing people additional fees and costs when it is down on appeal and can be determined?

MR. FACEMIRE: Okay, Your Honor. In my memorandum I address that very point. All the parties except myself in that case are now bankrupt. RTC has taken over the bank. Ben J. and Hazel Powers are in Chapter VII bankruptcy. In Chapter VII bankruptcy Ben J. and Hazel Powers have admitted to owing me $250,000.

Ben J. and Hazel Powers could not possibly owe me $250,000 unless there was fraud involved in that case. Ben J.

and Hazel Powers have, by admitting that the claim was fixed and litigated, acknowledge that there was fraud.

Now, the case that I have pointed out in my memorandum here points that the attorneys who did this can be held liable personally for that action. Eric F. Schell fabricated the false documents. This man here fabricated those documents in his office to deceive that court.

This attorney---

THE COURT: Well, why aren't you arguing that down in the Court of Appeals where the case is presently? Why are you bringing it in here and talking to me about it?

MR. FACEMIRE: Your Honor, for the simple fact, these attorneys are not parties to that action. These attorneys are a separate issue. Those parties---

THE COURT: Go down to the Supreme Court and get your determination and then take whatever action is appropriate.

MR. FACEMIRE: Your Honor, the other problem here is also we have a problem of the possibility of a statute of

limitations. I have to get my claim in here to protect my claim.

These attorneys, the only thing that the Supreme Court of Virginia can do, or if I take it to the Supreme Court of the United States can do, is possible impose sanctions. And that is not going to cover the damage that these defendants have done to me.

I, therefore have filed this claim before this Court. And there is no way, there is no way, as I pointed out in this memorandum, that two attorneys can commit a fraud upon the court and stand behind their own fraud and deceit of the judicial system of this nation and claim no liability. Your Honor, I maintain that I have a completely valid claim here. And I respectfully request that the motion be denied.

THE COURT: All right. Well, Mr. Facemire---

MR SCHELL: Your Honor, may I take two minutes just to set the record straight?

THE COURT: This case has been litigated in the Circuit Court of Fauquier County. These exact issues have been litigated out there. This is about the third suit that I have

been involved in over this issue. And every single time it comes before me, you clearly understand that this has been litigated out there.

And the motion for summary judgment is granted. The case is dismissed.

MR. SCHELL: Your Honor, may I have leave to file affidavits for attorney's fees and costs?

THE COURT: Well, you can do whatever you feel is appropriate.

MR. SCHELL: Thank you, Your Honor.

HEARING CONCLUDED

I certify that the foregoing is a true and accurate transcription of my stenographic notes.

Norman B. Linnell, CP, CM, CE

RALPH E. FACEMIRE
449 E. University Blvd.
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(301) 439-7823
PLAINTIFF

vs.

DAVID L. DUFF, P.C.

and

DAVID L. DUFF

and

ERIC F. SCHELL

all at

11320 Random Hills Road
Suite 540
Fairfax, Virginia 22030
(703) 591-7474
DEFENDANTS

Civil Action No. 92-1330-A

COMPLAINT FOR DAMAGES, FRAUD

(1) THIS COURT, has jurisdiction pursuant to Title 28, section 1332, in that there is true diversity of citizenship and the amount in controversy exceeds Fifty Thousand Dollars ($50,000).

(2) Plaintiff is a citizen of the United States and a resident of the State of Maryland.

(3) Defendant, David L. Duff, P.C. is a Virginia Corporation.

(4) Defendants, David L. Duff and Eric F. Schell are citizens of the United States and residents of the State of Virginia.

(5) Together these defendants as attorneys represented Ben J. Powers Construction, Inc. (Corp.) Ben J. Powers (Mr. Powers) and Hazel Powers (Mrs. Powers) in Chancery No. 90-33 in the Circuit Court of Fauquier County, Virginia (90-33).

(6) Together these defendants as attorneys represented Mr. Powers and Mrs. Powers in Civil Case No. 91-1624A in this very Court (91-1624A).

COUNT I
FRAUD

(7) These Defendants David L. Duff, P.C. (P.C.), David L. Duff (Duff) and Eric F. Schell (Schell) did individually and collectively, willfully and maliciously use fraudulently fabricated documents to get rulings

favorable to their clients in case 90-33 and case 91-1624A.

(8) These Defendants P.C., Duff and Schell did individually and collectively, willfully and maliciously used a statement out of context from a deposition to deceive the Court in case 90-33.

(9) These Defendants P.C., Duff and Schell did individually and collectively, willfully and maliciously use fraudulently fabricated (a) Waiver of Notice of Organization Meeting (b) Minutes of Organization Meeting (c) Waiver of Notice of First Meetings of Shareholders (d) Minutes of First Meeting of Shareholders (e) Waiver of Notice of Annual Meeting of Shareholders (f) Minutes of Annual Meeting of Shareholders (g) Minutes of Annual Meeting of Board of Directors (h) Offer of Purchase (Ralph E. Facemire) (i) Offer to Purchase (Mr. Powers and Mrs. Powers) (j) Minutes of Special Meeting of Board of Directors (k)

Waiver of Notice of Special Meeting of Shareholders (l) Minutes of Special Meeting of Shareholders (m) Waiver of Notice of Special Meeting of the Board of Directors AND (p) By-Laws, to deceive the Courts in cases 90-33 and 91-1624A and thus defraud Ralph E. Facemire (Facemire). Please see Exhibit A which is copies of these fraudulently fabricated documents.

(10) In addition to the defendants, Mr. Powers, Mrs. Powers and Corp. did participate in this fraud upon the advice of these defendants, however since the other parties are now bankrupt a case against them would be moot. Mr. Powers and Mrs. Powers in a Chapter 7 Bankruptcy have admitted they owe Facemire $250,000 and Facemire will file an objection to discharge to as per Title II paragraph 523(a)(6) of the Bankruptcy Code.

(11) In the case of Stevens v. Rifkin (1984, NO Cal) 608F Supp 710, it was found "Attorney who takes action on behalf of client that attorney knows or reasonably

should know will violate clearly established constitutional or statutory rights of another may be held liable for damages."

(12) As a direct and foreseeable result of the willful and malicious fraud of P.C., Duff and Schell I have been deprived of $500,000 worth of equipment and the use of that $500,000 worth of equipment since October 23, 1991. The Fair Market Value for the rental of that equipment is $41,815 per month.

(13) As a direct and foreseeable result of the willful and malicious fraud of P.C., Duff and Schell I have suffered severe mental anguish.

WHEREFORE, I Ralph E. Facemire respectfully judgment request against David L. Duff, P.C. and David L. Duff and Eric F. Schell in the amount of $459,965 for rent of equipment from October 23, 1991 through September 23, 1992, $100,000 for mental anguish this fraud caused me, $41,815 per month for rent of the

equipment from September 23, 1992 to the time that equipment or comparable equipment is returned to me in good operating order, punitive damages and all taxable costs.

YOUR PLAINTIFF demands trial by jury.

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